

# Strategy Research Project

## ESTABLISHING CIVIL CONTROL: RULE OF LAW PLANNING IN FUTURE OPERATIONS

BY

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USAWC STRATEGY RESEARCH PROJECT

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## **ABSTRACT**

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This paper will review national and military strategic policy, Joint and Army doctrine, lessons learned from historical and contemporary stability operations, and other sources. It will assess the importance of establishing the Rule of Law within host-nation governments during post-conflict operations as a strategic precursor to stabilizing the nation state and to facilitate a successful end state for a geo-political withdrawal of US forces. Finally, this paper will seek to identify gaps in current policy and doctrine that, if corrected, can lead to improved planning for implementing the Rule of Law in future operations.



## ESTABLISHING CIVIL CONTROL: RULE OF LAW PLANNING IN FUTURE OPERATIONS

The rule of law is the cornerstone for all other elements of democracy. A free and fair political system, protection of human rights, a vibrant civil society, public confidence in the police and the courts, and economic development all depend upon accountable governments, fair and accessible application of the law, and respect for international human rights standards. In post-conflict settings, reestablishing the rule of law is the first step in the rebuilding process. Establishing peace and security and rebuilding justice institutions can help to develop the necessary climate for reconciliation, public confidence, and subsequent economic growth.<sup>1</sup>

USAID on Democracy and Governance

American political and military leaders at the onset of combat operations in Afghanistan and Iraq did not fully foresee the capital costs or political complexities implied by the nation-building responsibilities that would certainly follow.<sup>2</sup> A key aspect of the post-conflict environment characteristic in both operations was the immense challenge of reestablishing security, of all types, before other reconstruction efforts could reasonably begin.<sup>3</sup> Subsequent lessons learned reports and studies continue to document how the military, and its interagency and coalition partners, refine and improve the critical governmental functions that contribute to civil security, civil control and rule of law. This paper seeks to address how the previous decade's experience of security sector and justice sector reform<sup>4</sup> can be applied in pre and post conflict stability operations. US national security interest is often at stake as the growing number of fragile and failing states struggle to maintain legitimacy, build capacity, and create governance resilience. Security and justice sector reform capacity within the US government faces serious policy and resourcing barriers to a comprehensive response capability that adequately services the risk. Rule of law reform capacity is critical to

future national security policy as a means by which the full effort of the interagency, including DoD, can be leveraged to assist nations establish critical civil control functions of governance that serve to facilitate the reform of all other sectors.

Military and intergovernmental solutions for creating civil security in Afghanistan and Iraq precursor the foundation of today's Stability Operations and Counterinsurgency doctrines. The doctrinal resolution to the hard lessons experienced during early US nation building operations is captured in Army FM 3-07, Stability Operations, and FM 3-24, Counterinsurgency. Certainly the character and conduct of operations during the last seven years in Iraq and Afghanistan validated their importance, and after nearly a decade of conflict stability operations doctrine continues to adapt to the complex challenges inherent in both missions. The real-world challenges placed upon its core doctrinal concepts demonstrate why the Department of Defense reissued guidance in September, 2009 identifying stability operations as "a core U.S. military mission that the Department of Defense shall be prepared to conduct with proficiency equivalent to combat operations."<sup>5</sup>

### Growth of Military Soft Power

The application of this directive is by no means a simple doctrinal change. At the same time, it is a timely substantiation that the "lines separating war and peace, enemy and friend, have blurred and no longer conform to the clear delineations we once knew."<sup>6</sup> It reaffirms that the application of soft power, whether the military is in a primary or supporting role, must be equally considered part and parcel to the threat or use of force through the hard power apparatus. Success in both Stability and COIN operations, particularly when considered in the larger context of the post-conflict nation building missions of both operations, is universally predicated on one unifying principal. In all

cases the important soft power tasks of reforming or rebuilding the economic and governance sectors of a state are best done so within a security environment that is permissive to these efforts.

While the US military can do much to establish and enforce security in these operations, long term security is best performed by a country's own indigenous security forces.<sup>7</sup> Legitimate, effective civil security and control cannot endure without the presence of laws and the ability to apply them. Functional, effective rule of law institutions of government, operating inside an established security environment, form the foundation for progress across all sectors of reform.<sup>8</sup>

### Why Rule of Law?

Strategic considerations for fragile, failing, or post-conflict states must include viable rule of law principles as a precursor to long term stability. Effective rule of law systems help to ensure public safety and legitimize the government, and can be a determinant factor in the decisions of international development entities to invest resources in the country.<sup>9</sup> In this regard, rule of law capacity building is a viable defense policy initiative with equal applicability and strategic value during Phase Zero, disaster relief, pre-hostility or post-conflict stability operations.

One of the problems with the conceptualization of rule of law in early international development and reconstruction efforts was the lack of a unified definition. Terms varied widely. Initially, academic efforts tended toward definitions that viewed rule of law reform as institutionally centric, long-term organizational development initiatives. Much of these early international reconstruction efforts leaned toward legal and court system reform. An ends-based approach to reform developed later which worked toward specific, measured results for functions or capabilities of governance. In an ends-based

approach, justice sector activities are viewed as a system of end goals that are mutually supportive across government institutions.<sup>10</sup>

While early reform strategies by coalition forces in Iraq and Afghanistan were institutional centric, eventually an ends-based approach developed. One of the primary lessons of the US experience in these two operations is the synchronization of ends-based system reform efforts simultaneous with the development of the government institutions that support them.<sup>11</sup> Security sector system reform that meets definable goals with a supporting effort to reform the larger institutions of government has become the model for current US justice sector reform initiatives. In 2008, the Army harmonized these two concepts in its rule of law definition. This definition is shared jointly with the Department of State and its reconstruction agencies:

A principle under which all persons, institutions, and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and that are consistent with international human rights principles.<sup>12</sup>

This is an important doctrinal milestone. As late as 2008, dialogue about rule of law in military journals was still based upon the problem that it was not clearly defined within DoD.<sup>13</sup> This manual brings the State Department, as lead government agency for stability and reconstruction, and the DoD in close alignment with the definitions used by the United Nations, USAID, and other relief organizations:

A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.<sup>14</sup>

Considering there is no likely scenario in which military assets will be used unilaterally to perform justice sector reform operations, the alignment of definitions is an

important step toward unifying efforts with joint, intergovernmental, and international partners.

### Policy Dissonance and Police Reform

Traditional views toward justice sector reform discounted the potential role that the Department of Defense could play in these efforts. Or, perhaps more accurately, DoD did not seek a larger role beyond the limited programs it operated in the years that preceded the initiation of operations in Afghanistan in 2002. For much of the Cold War era, the growing field of rule of law reform was viewed as an international development problem. However, the US military has a long history of conducting operations that today would fall under the purview of security and justice sector reforms.

US forces were directly involved in establishing rule of law since the Spanish American War, and were heavily involved in Germany and Japan at the end of WWII. These early efforts can best be characterized by policies that centered on replacing constitutional laws and reorganizing criminal justice systems to resemble the American system.<sup>15</sup> They were designed to replace local systems with American equivalents thought to be superior, and based on US democratic ideals thought to be universally relevant to all cultures and societies. Policing and corrections programs centered primarily on vetting indigenous officers and joint operations with the intent of transforming local systems in accordance with western models. Some of the early lessons from these operations are familiar to contemporary practitioners. Similar to today's operations, issues of legitimacy and institutional reform challenged military authorities.

In the years following, other US efforts toward building justice capacity continued along similar lines but became the exclusive purview of the State Department. From

1957 to 1974, the US operated a foreign police training operation, through what would become the USAID Office of Public Safety (OPS). The organization's mission focused on increasing local police capacities in support of government counterinsurgency efforts, and the "planning, programming, policy and procedures would be closely coordinated by OPS to insure conformity with the overall objectives of the Police Assistance Program. These courses would be weighted heavily toward the internal security, counter-subversive and counter-insurgency aspects of foreign police operations. Hard indoctrination in the human relations/Anglo-Saxon concepts of law enforcement would also be given a prominent place in the curriculum".<sup>16</sup> Under the administration of the Office of Public Safety, the program operated the International Police Academy in Washington, D.C., training over 5,000 mid-grade and senior police officers from 77 countries. OPS also sponsored foreign police advisors that operated in 52 countries during the life of the program.<sup>17</sup> Its purpose was to strengthen the legitimacy of police forces in western countries and as a result the counterinsurgency capacity of their governments. It is also the largest rule of law centric program sponsored by the US government since the post-WWII occupations until today.

Despite early successes, OPS and its supporting missions came to a sudden end. Because of congressional concerns over foreign relations legitimacy, the presence of OPS police advisers in countries accused of acts of police brutality ultimately led to the end of the program.<sup>18</sup> In 1974 Congress added Section 660 to the Foreign Assistance Act which prohibited, with few exceptions, federal funding of police, law enforcement and prison training or advising activities in the US or abroad.<sup>19</sup> The

resulting legislation introduced a period of US policy devoid of a comprehensive interagency commitment to police reform or other justice sector reform initiatives.

Today, both imprecise policy and fragmented funding for the limited programs within DoS, DoD, DoJ, and others have created a cacophony of bureaucratic constraints to a unified national effort toward rule of law reform abroad. The basic restriction set forth by the Foreign Assistance Act still remains, with exceptions approved for limited police assistance. Since the conclusion of the OPS program, police reform agencies have been established in both the DoS and DoJ, and the FBI and DEA both partner with foreign police services.<sup>20</sup> Separate programs also exist within the agencies that address courts and legal reforms, anti-corruption policies, border security, counter-narcotics and others.

By attempting to prohibit US police assistance programs over 25 years ago, the Foreign Assistance Act has instead created a disjointed, decentralized system of agencies across the Departments operating underfunded programs that, even when considered in toto, fall significantly short of the capability required. It is this lack of capacity that critics continuously point to with regard to the systemic failures of the US government's efforts. The disjointed bureaucracy and balkanized responsibilities within the Executive branch lead directly to the lack of a unified effort and accountability found in repeated government reviews and reports.<sup>21</sup>

### Moving Stability and Reconstruction into the Next Century

Since the onset of host nation security force partnering and capacity building in Afghanistan and Iraq, the landscape has changed significantly for US rule of law reform assistance. Despite the maze that is development policy and funding amongst US government stakeholders, DoD now implements one-fifth of the US total development

and foreign aid budgets.<sup>22</sup> A subsequent and unexpected result of this alignment is that as DoD is improving its coordination efforts, it is demonstrating the inherent value of the military's potential role in applying soft power or directly supporting other government agencies that are doing so. In November 2007 Secretary Gates alluded to this success and that perhaps the time to repeal Section 660 of the Foreign Assistance Act had come.

In the past, U.S. efforts to train foreign security forces have been burdened by outdated restrictions. In Afghanistan, for example, building up the Afghan army was harmfully delayed because there was no such category in the U.S. federal budget at the time, and we lacked the authorities and the resources to do so for a period. Other painful delays in training the Afghan and Iraqi police forces were the result of the fact that it was the responsibility of others and not the Department of Defense, and we were prohibited from participating in training police in the early period.<sup>23</sup>

DoD has enacted authority to provide security sector police assistance in Afghanistan through a clause in Section 660 of the Foreign Assistance Act that excludes "post-conflict restoration of host nation infrastructure for the purpose of supporting a nation emerging from instability."<sup>24</sup> Capacity building efforts for foreign armies is not specifically banned, as it is for police and prison programs, nor is capacity assistance to border guard agencies or courts reform. In 2004 and 2005, DoD was tasked with the responsibility of reconstruction in Iraq and Afghanistan. For the first time since post-WWII reconstruction the US and its coalition partners are operating simultaneous rule of law development across both the security and justice sectors of governance. This responsibility grants the military comprehensive control for stability operations including police reform. By doing so, the military was asked to fill significant gaps in US government civilian capacity to execute the lead agency oversight responsibilities directed to DoS in NSPD-44.<sup>25</sup>

Expanding the role of DoD's authority to partner and conduct rule of law capacity building operations has two inherent problems. First, it further complicates the system of development coordination and funding that has emerged within the government. Today more than fifty agencies and organizations operate US foreign assistance programs across a widely assembled array of legislative authorizations. One of the clear pitfalls in the current US system is that it renders impossible the ability of DoS to unify efforts across all agencies, manage and optimize the funding, synchronize these efforts to the mutual benefit of all, and most importantly to the benefit of the host country.<sup>26</sup>

Second, as DoD continues to orchestrate the nation-building efforts of the two wars, how this will influence future reconstruction policy and planning is unclear. Today there is little evidence that policy is adapting to incorporate the successes that these rule of law foreign assistance and reform programs are now realizing. This is creating a gap in the important link between the strategic policy and how it is applied in practice. As the reconstruction efforts continue in Iraq and Afghanistan, the templates for how US government agencies, international coalition partners, and supporting non-governmental organizations are being unified toward a broad purpose.<sup>27</sup>

The impact of military involvement, particularly on the scale of the two ongoing reconstruction efforts, is a precedent that will be hard to ignore in the future. Recent testimony by the Special Inspection General for Iraq Reconstruction to Congress concludes that these new relationships, forged in the largest and most expensive<sup>28</sup> reconstruction effort in US history, are reshaping how the government must address future SRO endeavors with regard to rule of law reform:

In the area of police training, prudent practice should require all programs to be closely linked to a comprehensive Rule of Law strategic plan.

Handing out guns, building new facilities, and putting people through several weeks of basic training, outside the purview of a coherent Rule of law strategy, will not bring sustainable stability. This axiom militates in favor of a unified management system so that the expertise of the Department of Justice, the State Department's International Narcotics and Law Enforcement Bureau, and Defense's recently developed stabilization capacity are brought to bear in an integrated fashion that embraces the building of capacity in court systems, laws, prisons, and police forces. Piecemeal approaches will not solve systemic problems. Programs should be designed in a way that can achieve results within SRO environments—based on an understanding of the culture, capabilities, and capacity of the host country.<sup>29</sup>

It is a wartime alliance to be sure and does little to solve the policy confusion in Washington, D. C., but the lessons of Iraq and Afghanistan have certainly lead to a changed outlook for US stabilization and reconstruction efforts going forward. New policy and doctrine within DoD, and a newly created Office of the Coordinator for Reconstruction and Stabilization (O/CRS), are significant steps forward. Still, today “no single agency has purview over the full spectrum of civilian-military stabilization and reconstruction operations, and thus meaningful accountability is missing. Rule of Law programs are divided among Defense, State, and Justice...“Stovepiping” is the word — and the reality.”<sup>30</sup>

This new marriage between diplomacy and defense is not surprisingly without its critics. There is an undercurrent within foreign development circles that aid money, construction projects, and other forms of assistance distributed through military operations are conditional and counterproductive to long-term development.<sup>31</sup> Despite its tenuous beginnings,<sup>32</sup> the two primary Departments have over time developed close ties and established roles that are mutually supportive. Following these initiatives, Secretary Clinton announced that the new DoS Quadrennial Diplomacy and Development Review (QDDR) that the Department is assessing the U.S. approach to

SROs, including the integration of civil contingency response capacities with Defense.<sup>33</sup>

There is no better time than now to capture the joint and interagency rule of law capacity building lessons of the last decade. These key relationships leverage the full weight and effort of the capabilities represented across the separate agencies. Similarly, the growing risks to fragile and developing nations in the coming century foreshadow a robust and responsive US capability requirement that serves to create and preserve relationships vital to future interests. DoD has organic rule of law capacities and skill sets that can and should be incorporated into future O/CRS partnership and reconstruction operations.

#### "The Future Ain't What it Used To Be"

As the global landscape continues to intertwine economically and politically, the risk to the traditional sovereignties of nations grows as well. Fragile governments are increasingly at risk to internal and external influences. The recent uprisings in countries across the Middle East demonstrate the power of the governed to change the nature and structure of their government. Global actors of all types increasingly challenge the concept of borders and create pressure on fragile governments around the world. Because "the seriousness of the problem lies in the complexity of these organizations and their activities,"<sup>34</sup> strategic leaders should expect increased US involvement, with or without coalition partners, in stability operations because of the non-state actors' "global penetration and the threat they pose to democracy and legitimate economic development - these organizations clearly undermine the concept of the nation-state."<sup>35</sup>

This distinction is important to any attempt at scanning future strategic threats and potential circumstances that would require partnership reform efforts as a deterrent, or stability operations as a response. Just as early US concepts of fighting subversion

and counterinsurgency included law enforcement, prison operations, and constitutional reform as a part of strategy during the years preceding the Cold War, modern rule of law reform capability, able to provide capacity building effort to each of the Rule of law functions, must be centric to future pre-conflict theater security cooperation planning and post-conflict stability operations.

The new dynamics of US SRO policy development and execution creates a propensity for current models of US agency cooperation, including DoD, to continue into the future. With the future of DoD and DoS appropriations expected to decrease in the out years, it is unlikely in the foreseeable future that the scope and scale of operations in Iraq and Afghanistan will be repeated. And as DoS continues to build its O/CRS capability, including the mandated civilian response corps,<sup>36</sup> the global strategic security environment makes the concept of deliberate, increased DoD interagency involvement in support of O/CRS goals and operations both timely and essential. Security and justice sector reform operations are ideal vehicles for this effort. Within these broad categories, rule of law capacity building operations present tremendous opportunities to assist partner nations globally to build these critical capabilities. They serve to shape future US security by promoting long-term relationships with stable, legitimate governments whose security and justice apparatus supports democratic governance and mutually viable economic partnerships.

Clearly rule of law is not the only sector of development that is vital to good governance, but it is worthy of key policy emphasis. Consequently, it is no coincidence that the largest of the five key skill sets of the O/CRS civilian response corps is dedicated to security and rule of law operations.<sup>37</sup>

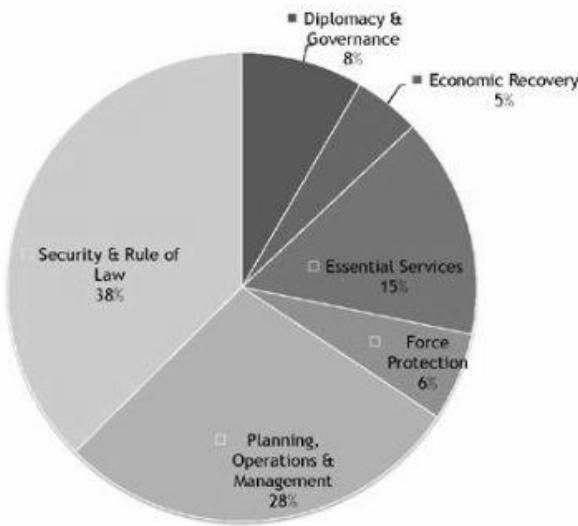


Figure 1. 2010 Civilian Response Corps Active Component Membership by Skill Set<sup>38</sup>

In 2010 O/CRS executed \$442 million dollars in appropriations (including \$100 million in DoD transfers under National Defense Authorization Act, Section 1207 authorization) and supported thirty-three missions in twenty-nine “conflict-prone” countries, including Afghanistan, Yemen, and the Democratic Republic of Congo.<sup>39</sup> These and other countries receiving O/CRS program support are strategically important both to the stability of their regions and US interests. However, the entire combined appropriation is relatively small when compared to the recent contract awarded to DynCorps for “providing specialized training and mentoring services for the Afghanistan Ministry of Interior and Afghan National Police.” The estimated value of that contract exceeds \$781 million for a two year span, with the potential to exceed \$1.04 billion.<sup>40</sup>

By comparison to this program, designed to entirely reform just one component of the Afghanistan government’s security and justice sectors, the combined personnel capability of the O/CRS commitment worldwide is approximately 131 active civilian

response corps members and over 1000 standby members.<sup>41</sup> If all of these members were assigned to the same mission in Afghanistan today, it would represent approximately 18% of the personnel assigned to Combined Security Transition Command – Afghanistan in 2009.<sup>42</sup> While O/CRS has achieved considerable success meeting its NSPD-44 requirements, and has seen increased funding, its current organization is neither designed nor appropriated to support the scale and number of potential operations that an unstable future security environment forebodes. In a globalizing world an ambiguous future becomes more volatile, and ultimately the interagency reconstruction capability of the US government, under the current construct, may become a glaring vulnerability within US policy.

This is not a critique of DoS or O/CRS policy. It is an indicator that the means appropriated by Congress to achieve the strategically critical ends assigned to O/CRS are woefully short of what is conceivably a potential keystone of future US foreign policy – early engagement in security and justice reform efforts in vital regions of US security interest. As a result, considerable change to current policy regarding DoD's role in future rule of law partnership efforts must be considered. These possibilities lead to new questions regarding the utility of established rule of law initiatives in future US security and justice sector reform operations, and how they are planned and resourced in support of stability operations. What capabilities should DoD continue to foster in the skill set of its force? How are the capabilities developed within the military over the last ten years best suited to future security policy goals? What barriers in policy and doctrine exist that must be addressed?

## Fostering Adaptation to Current Capability

DoD security and justice sector reform activities of the past decade have today precipitated significant institutional change regarding how the military views its role in these operations. Every function within the DOTLMPF processes has facilitated change regarding how the military services plan and execute reform activities. These capabilities are most often associated with the security sector reform (SSR) missions of, primarily, host nation military and police forces. This role is traditionally tied to the military's unique capacity of establishing a permissive security environment that fosters the reform initiatives of other SSR actors.<sup>43</sup> While recent policy and doctrine allows for DoD and the military to lead these efforts, this is conditional to the security environment and is assumed to be temporary until DoS and other agencies can assume their lead agency functions. In permissive environments DoD is a supporting agency and the military is a capability provider to that effort. These critical military partnering and advisory skills, now codified in Field Manual 3-07.1, *Security Force Assistance*, are valuable lessons of the past decade; and there is little doubt that US forces will be called upon in the future to perform these missions.

Rule of law capacity building cuts across the functions and organizations within both the security and justice sectors. As an end state to successful stability operations,<sup>44</sup> planning considerations primarily focus on legal framework and court reform, access to justice, and police and corrections reform operations. Because police reform is a critical function to both civil security and civil control capacities, it can be viewed as both creating the constabulary, stability capacities necessary to perform civil security and developing the community law enforcement capacities that support justice sector reform.

In support of Rule of law justice sector development programs, DoD has the organic capabilities to partner, and to a limited degree, advise<sup>45</sup> host nation forces and other institutions. Military Police and Judge Advocates of all the Services are capable of providing, or developing if required, an expeditionary partnership capability to the doctrinal tasks associated with establishing civil control. In all cases, except when the security environment dictates DoD lead in post-conflict operations, these activities should be directed by Geographic Combatant Command (GCC) Theater Security Cooperation Plans (TSCP), and closely synchronized with DoS and USAID country team development programs.

There are skills that military forces can provide: school and academy organization, physical security of infrastructure and property accountability, weapons training, civil disturbance operations, basic police tasks in support of CIVPOL programs, court reform, prison facility operations and prisoner custody and control procedures are but a few. These skill sets are organic to military police and judge advocate organizations and do not need to be created. Those same skills have proven to be key foundational competencies that contributed to successes in security force and justice sector reforms in both Iraq and Afghanistan. How they are applied to both during phase zero and post-conflict stability operations is keenly relevant to future planning efforts. Capturing the techniques and procedures used by military forces in justice sector reform operations today in Iraq and Afghanistan is paramount to DoD's capability to support the holistic governmental approach to pre and post conflict reform and reconstruction missions that will be conducted in the future.

Looking toward future security policy challenges these partnership and reform lessons, and the methods by which they have been applied, can be a valuable tool for leaders seeking security policy options. In 2010, 131 countries are listed in the two highest risk categories of the Fund for Peace Failed States Index, indicating that they are failing or demonstrate risk indicators to become a failing state.<sup>46</sup> There are only 177 nations assessed in the entire index. Among the 46 countries listed as lower risk, few have demonstrated the capability and political will to participate in long-term, post-conflict stability and reconstruction operations. Only the US has demonstrated that it has the economic and political capacity to lead them on a scale equal to the operations in Iraq and Afghanistan. Indeed US capability, and to a greater extent political will, toward participating in these costly commitments may be waning with the fiscal constraints it faces for the foreseeable future.

As these developing nations continue to work toward increased capacities of governance, a growing role for Rule of law partnership initiatives during GCC phase zero operations seems clear. As a result, DoD should foster the capability of its rule of law functional practitioners to continue to develop these critical partnership and advisory skills by creating expeditionary, scalable partnering capabilities that support DoS and GCC security cooperation priorities.

### Recommendations

In order to realize the partnering capacities for rule of law development participation by DoD entities discussed here, there are doctrinal and policy considerations and barriers that must be considered and addressed. These recommendations are limited to the considerations discussed in this paper, and do not

attempt to categorize the comprehensive list of associated interagency operational and policy issues.

*Congress should amend the restrictions to US participation in foreign police and prison reform in Section 660 of the Foreign Assistance Act of 1961.* The argument for this critical change in security policy is not new. In fact, it was recommended as early as 2004 by the Center for Global Development in its report, *On the Brink, Weak States and US National Security*. With regard to the ban on police and prison reform, the report suggests that the government should:

Create effective US assistance programs to police and military forces to help governments develop the ability to secure their territories and protect their populations, by revisiting the excessively rigid regulatory framework for these assistance programs and improving their quality and coordination...In the short term, the US agenda should be to help build infrastructure to fight terrorism and other illicit networks, in exchange for progress toward genuine accountability and civilian oversight of security forces. In the long term, the United States must revisit its own capabilities and regulatory framework in order to facilitate investments in security-sector reform that build the overall capacity of militaries and security services, while taking care to increase their legitimacy and accountability to the citizens they serve.<sup>47</sup>

In 2004 this recommendation was both timely and prudent. The US effort in police reform - and on a smaller scale courts and prisons - through the years that followed demonstrates the value of this capability to reconstruction end states that the report suggests. These missions were within statutory limits because of a post-conflict exemption in the law. But they clearly demonstrate the potential effects that can be achieved in security and justice sector development program goals. The government should amend the law to provide this capability for consideration in both international development and TSCP policy option planning.

*A review of FMs 3-07 and 3-07.1 should include rule of law considerations for phase zero and other partnership options beyond post-conflict reconstruction and stabilization.* Security force assistance in its current doctrinal context relies on Brigade Combat Team employment and presupposes large scale, post-conflict operations. In more permissive security environments, MEB and MP functional brigades<sup>48</sup> are ideally suited to command and control limited security and justice sector partnership missions.<sup>49</sup> These units can be the base organization for an interagency task force, which includes civilian response corps and other agency rule of law functional experts; specifically designed to perform unified rule of law reform operations across all phases of planning and in all but the least permissive security environments. Subsequently, how these operations are manned, equipped, and executed must be incorporated into the doctrine of the appropriate schools' training and publications for each Service.

*Interagency planning and coordination should consider how the capabilities and capacities of DoD directly apply to security and justice sector reform priorities - and use them.* Several studies and documents have concluded that the US lacks the capacity for wholesale police reform operations because of several factors, including the lack of a US national police capability,<sup>50</sup> the inability of civilian police agencies to fill CIVPOL capacity requirements, and the inability of military police units to effectively advise on civilian community policing principles.<sup>51</sup> The desired end states end states of these studies for rule of law capacity, particularly in the area of police reform, can be realized by the use of this interagency task force concept. When not acting as the lead agency, DoD has abundant capacity to provide functional, expeditionary organizations that are task organized specifically to perform rule of law partnership and reform operations.

The employment of any DoD capability must be coordinated as part of the appropriate GCC TSCP, but the nature of the capability does not have to be limited to the DoD end states represented by the plan. Rule of law partnering can support any number of programs within the interagency provided it nests with the supported agency's expected outcomes. This does not mean that DoD participation will be a valid option in all cases. Certainly the use of military for development purposes creates concerns of development program legitimacy in many cases, but not all of them. The capabilities and capacities of scale that DoD provides in terms of increased partnership, planning expertise, and force sustainment make it a necessary consideration.

### Conclusion

There is little dispute to the assertion by many that the future global security environment will be, at a minimum, equally challenging to the US and its allies. Failed and failing states, and those emerging from conflict, will continue to have strong regional security implications and impact vital US interests. Other transnational threats and actors will have growing influence on global economic and security affairs in a time when the economic capacity of the US will be tied to domestic fiscal priorities. Nations will become increasingly reliant on the ability of their governments to provide for external and internal security of populations, resources and infrastructure. As a foundational concept of good governance, rule of law development and reform must be a key component of a nation's development goals to set the conditions for development in other sectors of governance.

As US policy looks to address these future security challenges, so too must it consider, where appropriate and prudent, early rule of law reform efforts in at-risk nations. By eliminating the statutory barriers to US government participation in these

activities, appropriate agencies are free to develop programs that address directly the challenges of ineffective, corrupt, or nonexistent courts, police, and prison functions of the government. When considered holistically with border, customs, and other specialty functions of the security and justice apparatus, comprehensive development and reform assistance can finally be considered by the combined capacities of the US interagency.

Finally, the shared lessons and progress between DoD and DoS with regard to the planning, coordination, and execution of stability operations cannot be lost at the conclusion of operations in Iraq and Afghanistan. In an expected time of limited appropriation and resources, DoD participation in, specifically, the security and justice sector initiatives discussed here will be difficult, but ultimately prudent and can be made to work to the mutual benefit of all parties. These two agencies especially, and jointly with other interagency stakeholders, must carry forward the hard lessons of cooperation and coordination of effort between them to better prepare for the next threats to US security that surely await us.

## Endnotes

<sup>1</sup> USAID Rule of Law Home Page,  
[http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/technical\\_areas/rule\\_of\\_law/](http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/rule_of_law/)  
(accessed November 10, 2010).

<sup>2</sup>Celeste J. Ward, "The Coalition Provisional Authority's Experience with Governance in Iraq: Lessons Identified," *US Institute for Peace Special Report No. 139*(Washington, DC: U.S. Government Printing Office, May 2005).

<sup>3</sup> Special Inspector General for Iraq Reconstruction, "*Applying Iraq's Hard Lessons to the Reform of Stabilization and Reconstruction Operations*" (Washington DC:U.S. Government Printing Office, February 2010), 23.

<sup>4</sup>U.S. Department of the Army, *FM 3-07 Stability Operations* (Washington DC: U.S. Department of the Army, October 6, 2008), 2-6. US doctrine divides the security functions of a government into these two sectors. Primarily, policing is a justice sector function but is obviously an important component to security sector considerations.

<sup>5</sup>Department of Defense Instruction 3000.05, *Stability Operations* (Washington, DC: September 6, 2009), 2.

<sup>6</sup>FM 3-07, located in the Forward.

<sup>7</sup>U.S. Department of the Army, *FM 3-24, Counterinsurgency* (Washington DC: U.S. Department of the Army, December 15, 2006), 5-13.

<sup>8</sup>United States Institute of Peace, *Guiding Principles for Stabilization and Reconstruction* (Washington, DC: United States Institute of Peace Press, 2009), 6-74.

<sup>9</sup>Kirsti Samuels, “Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learnt”, *The World Bank Social Development Papers, Conflict Prevention and Reconstruction* No. 37 (October 2006), 12. Specifically, “...the World Bank has increasingly highlighted that effective, efficient and fair legal and judicial systems are essential to national economic and social development.” Additionally, Rule of Law is one of the World Bank’s Worldwide Governance Indicators in its aggregated report of over 200 economies: [http://info.worldbank.org/governance/wgi/mc\\_countries.asp](http://info.worldbank.org/governance/wgi/mc_countries.asp).

<sup>10</sup> Rachel Kleinfeld Belton, *Competing Definitions of the Rule of Law, Implications for Practitioners*, Carnegie Endowment for International Peace (Washington, D.C.), January, 2005, p. 28.

<sup>11</sup>U.S. Department of the Army, *Rule of Law Handbook, A Practitioner’s Guide for Judge Advocates* (Charlottesville, VA: Center for Law and Military Operations, 2010), 6-7.

<sup>12</sup>FM 3-07, Glossary-9.

<sup>13</sup>Christopher M Ford, “The Rule of Law for Commanders”, *Military Review*, 88, no. 1 (Jan/Feb 2008): 50. This source is used because it is the latest article found before the publication of FM 3-07 in October, 2008. The author’s comments capture very well the issues surrounding rule of law application efforts prior to the formal DoD definition.

<sup>14</sup>United Nations Security Council, *Rule of Law and Transitional Justice in Conflict and Post Conflict Societies*, Report of the Secretary General (New York, NY: August 2004), 4.

<sup>15</sup>Rule of Law Handbook, 2-5.

<sup>16</sup>Arthur M. Thurston, “Survey of Training Activities of the A.I.D. Police Assistance Program”, Department of State Agency for International Development, Washington, D.C., November 1962, 46.

<sup>17</sup>Dennis E. Keller, “U.S. Military Forces and Police Assistance in Stability Operations: The Least-Worst Option to Fill the U.S. Capacity Gap” (Carlisle Barracks, PA: Strategic Studies Institute, August 2010), 5.

<sup>18</sup>Ibid.,6.

<sup>19</sup>*Federal Assistance Act of 1961*, Public Law 87-195, 22nd Cong., 2<sup>nd</sup> sess. (September 4, 1961), 358.

<sup>20</sup> Keller, "Police Assistance in Stability Operations", 19-25.

<sup>21</sup> David H. Bayley and Robert M. Perito, *Police in War: Fighting Insurgency, Terrorism, and Violent Crime* (Boulder, CO: Lynne Reinner Publishers, 2010), 154.

<sup>22</sup> Lael Brainard, "US Foreign Assistance: Advancing National Security, Interests, and Values", *Congressional Record* (April 2008). An excellent graphic description from his book on the complexity of this issue is linked in the testimony transcript:  
[http://www.brookings.edu/testimony/2008/0423\\_foreign\\_assistance\\_reform\\_brainard.aspx](http://www.brookings.edu/testimony/2008/0423_foreign_assistance_reform_brainard.aspx)

<sup>23</sup> Robert M. Gates, Landon Lecture at Kansas State University (November 26, 2007):  
<http://www.defense.gov/speeches/speech.aspx?speechid=1199> (accessed on 27 December, 2010).

<sup>24</sup> *Federal Assistance Act of 1961*, Section 660(b)(6), 360.

<sup>25</sup> George W. Bush, *National Security Presidential Directive/NSPD-44, Management of Interagency Efforts Concerning Reconstruction and Stabilization* (Washington, DC: The White House, December 7, 2005).

<sup>26</sup> Brainard.

<sup>27</sup> Stuart W. Bowen, Jr., *An Urgent Need: Coordinating Stabilization and Reconstruction in Contingency Operations*, Special Inspector General for Iraq Reconstruction Testimony to the House Commission on Wartime Contracting in Iraq and Afghanistan (Washington, DC: February 22, 2010), 2.

<sup>28</sup> Stuart W. Bowen, Jr., *Oversight: Hard Lessons Learned in Iraq and Benchmarks for Future Reconstruction Efforts*, Testimony to the House Subcommittee on International Organizations, Human Rights, and Oversight of the Committee on Foreign Affairs (Washington, DC: February 24, 2010), 4 (Table 2-1).

<sup>29</sup> Ibid., 4.

<sup>30</sup> Stuart W. Bowen, Jr., "An Urgent Need: Coordinating Stabilization and Reconstruction in Contingency Operations", 2.

<sup>31</sup> Alexander Cooper, Jesse Laird, Kelly Campbell, Madelyn Hoffman, "The US War in Afghanistan, A Primer for US Peace Activists", *Peacework* (December 2008 – January 2009), 10.

<sup>32</sup> Curt Tarnoff, *Congressional Research Service Report for Congress, Iraq: Reconstruction Assistance* (Washington, DC: U.S. Government Printing Office, August 7, 2009), 17.

<sup>33</sup> Special Inspector General for Iraq Reconstruction, "Applying Iraq's Hard Lessons to the Reform of Stabilization and Reconstruction Operations" (Washington, DC: February 2010), 11.

<sup>34</sup> Louise I. Shelley, "Transnational Organized Crime: An Imminent Threat to the Nation State?" *Journal of International Affairs* 48, no. 2 (Winter 1995), 470.

<sup>35</sup> Ibid.

<sup>36</sup> Nina M. Serafino, *Congressional Research Service Report for Congress, Department of Defense “Section 1207” Security and Stabilization Assistance: A Fact Sheet* (Washington, DC: U.S. Government Printing Office, May 2008), 4. Specifically, “members would be drawn from the Departments of State, Justice, Commerce, Treasury, Agriculture, Health and Human Services, and Homeland Security, and from the U.S. Agency for International Development (USAID).”

<sup>37</sup> United States Department of State Office of Reconstruction and Stabilization, *2010 Year in Review, Conflict Prevention and Stabilization Operations* (Washington, DC: US Government Printing Office, January 2011), 17.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid., 15

<sup>40</sup> DynCorps International Press Release, “DynCorp International LLC Awarded Afghan Training and Mentoring Contract Valued at up to \$1 Billion,” [http://www.dyn-intl.com/news2011/news021411-di-llc-awarded-afghan-training-and-mentoring-contract-valued-at-up-to-\\$1-billion.aspx](http://www.dyn-intl.com/news2011/news021411-di-llc-awarded-afghan-training-and-mentoring-contract-valued-at-up-to-$1-billion.aspx) (accessed March 11, 2011).

<sup>41</sup> United States Department of State Office of Reconstruction and Stabilization, *2010 Year in Review, Conflict Prevention and Stabilization Operations*, p. 16.

<sup>42</sup> Inspector General, United States Department of Defense, *Semi-Annual Report to Congress* (Washington, DC: U.S. Government Printing Office, March 2009), 47. The report lists CSTC-A assigned strength at this time as 7373 personnel.

<sup>43</sup> FM 3-07, p. 6-5.

<sup>44</sup> FM 3-07, 4-10.

<sup>45</sup> The doctrinal difference between partnering and advising host nation forces is discussed in FM 3-07.1, *Security Force Assistance* (Washington DC: U.S. Department of the Army, May 1, 2009).

<sup>46</sup> *The Fund for Peace Failed States Index Home Page*, [http://www.fundforpeace.org/web/index.php?option=com\\_content&task=view&id=99&Itemid=140](http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=99&Itemid=140) (accessed March 19, 2011).

<sup>47</sup> Jeremy M. Weinstein, John Edward Porter and Stuart E. Eizenstat, *On the Brink, Weak States and US National Security* (Washington DC: Center for Global Development, June 8, 2004), 24.

<sup>48</sup> The capability of other Service equivalent organizations is a valid consideration. For example, can an USAF Expeditionary Security Forces Group support the requirement and affect an equivalent expected outcome.

<sup>49</sup> This is not entirely without precedent. The 550<sup>th</sup> Military Police Detachment was assigned to 8<sup>th</sup> Special Forces Group at Ft. Gulick, Panama from 1963-1974. They were in direct support to the 8<sup>th</sup> SFG's FID training mission and trained civilian police from countries across Latin

America in all types of police functions, from civil disturbance operations to law enforcement. For the full history, see Andy Watson, “Special Forces Military Police, the 550<sup>th</sup> Military Police Detachment, 1963-1974” *Military Police*, June 2007, <http://www.wood.army.mil/mpbulletin/pdfs/Fall%2008/Watson-SFMP.pdf> (accessed 9 February 2011).

<sup>50</sup>Bayley and Perino, *Police in War*, 154.

<sup>51</sup>Ibid., 157. See also Keller, “Police Assistance in Stability Operations”, 38.

